

Water Industry Competition (General) Regulation 2008

[2008-336]



New South Wales

Status Information

Currency of version

Historical version for 1 April 2013 to 26 June 2014 (accessed 30 June 2024 at 14:20)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Residential \(Land Lease\) Communities Act 2013 No 97](#) (not commenced)

Authorisation

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File last modified 20 November 2013

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New South Wales

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Water Industry Competition (General) Regulation 2008



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Water Industry Competition (General) Regulation 2008*.

2 Commencement

This Regulation commences on 8 August 2008.

3 Definitions

(1) In this Regulation:

approved auditor—see clause 31.

Australian Drinking Water Guidelines means the document entitled *Australian Drinking Water Guidelines*, published by the Australian Government, the National Health and Medical Research Council and the Natural Resource Management Ministerial Council, as in force from time to time.

Australian Guidelines for Water Recycling means the document entitled *Australian Guidelines for Water Recycling: Managing Health and Environmental Risks (Phases 1 and 2)*, published by the Environment Protection and Heritage Council, the Natural Resource Management Ministerial Council and the Australian Health Ministers' Conference, as in force from time to time.

authorised purpose, in relation to non-potable water, means any purpose specified in the relevant network operator's licence as a purpose for which the water may be used.

drinking water means water that is intended, or likely, to be used:

(a) for human consumption, or

(b) for purposes connected with human consumption, such as the washing or cooling

of food or the making of ice for consumption or for the preservation of unpackaged food,

whether or not the water is used for other purposes.

Note—

This definition corresponds to the definition of **drinking water** in Part 2B (Safety of drinking water) of the [Public Health Act 1991](#).

dual occupancy has the same meaning as it has in the standard instrument prescribed by the [Standard Instrument \(Local Environmental Plans\) Order 2006](#).

dwelling house has the same meaning as it has in the standard instrument prescribed by the [Standard Instrument \(Local Environmental Plans\) Order 2006](#).

infrastructure operating plan means a plan prepared in accordance with clause 6 or 13 of Schedule 1, and includes any amendment of that plan that the Minister directs to be made to that plan.

market means to promote the supply of water by a licensed retail supplier, or the provision of sewerage services by a licensed retail supplier, for the purpose of attracting customers for the supplier.

marketer means any of the following persons who promote the supply of water or the provision of sewerage services for the purpose of attracting or retaining customers:

- (a) a person who is a licensed retail supplier,
- (b) a person who, pursuant to a retail supplier's licence, is authorised to supply water or provide sewerage services,
- (c) a person who acts as agent of a licensed retail supplier, including a licensed network operator,
- (d) a person who acts as an intermediary between one or more customers and a licensed retail supplier.

marketing code of conduct means a code of conduct for the marketing of water supplies and sewerage services, as established by the Minister in accordance with clause 26, and as amended from time to time.

multi dwelling housing has the same meaning as it has in the standard instrument prescribed by the [Standard Instrument \(Local Environmental Plans\) Order 2006](#).

non-potable water means water that is not drinking water.

Register of Licences means the register referred to in section 20 of the Act.

retail supply management plan means a plan prepared in accordance with clause

7A of Schedule 2, and includes any amendment of that plan that the Minister directs to be made to that plan.

roof water means rainwater collected from the roofs of buildings.

sewage management plan means a plan prepared in accordance with clause 14 of Schedule 1, and includes any amendment of that plan that the Minister directs to be made to that plan.

small retail customer—see clause 5.

stormwater means rainwater that has run off any urban trafficable surface such as a pavement, car park, road, garden or urban vegetated open space.

supply failure customer means a person who, pursuant to section 57 (3) of the Act, becomes a customer of a retailer of last resort as a result of a declaration of supply failure under section 56 of the Act.

the Act means the [Water Industry Competition Act 2006](#).

transfer—see clause 4.

transfer code of conduct means a code of conduct for the transfer of water supplies or sewerage services, as established by the Minister in accordance with clause 27, and as amended from time to time.

water industry code of conduct means a code of conduct in relation to the respective responsibilities of licensed network operators, licensed retail suppliers and public water utilities, as established by the Minister in accordance with clause 25, and as amended from time to time.

water quality plan means a plan prepared in accordance with clause 7 of Schedule 1, and includes any amendment of that plan that the Minister directs to be made to that plan.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Transfers of water supplies and sewerage services

(1) Water supply to any premises is **transferred**:

- (a) from one licensed retail supplier to another, or
- (b) from a licensed retail supplier to a public water utility, or
- (c) from a public water utility to a licensed retail supplier,

if the ending, whether in whole or in part, of the supply of water to those premises by the one (the **transferor**) occurs for the purposes of, or at the same time as, the

beginning of the supply of water to those premises by the other (the **transferee**).

(2) Sewerage services to any premises are **transferred**:

- (a) from one licensed retail supplier to another, or
- (b) from a licensed retail supplier to a public water utility, or
- (c) from a public water utility to a licensed retail supplier,

if the ending, whether in whole or in part, of the provision of such services to those premises by the one (the **transferor**) occurs for the purposes of, or at the same time as, the beginning of the provision of such services to those premises by the other (the **transferee**).

(3) For the purposes of this clause it is immaterial whether the occupier of the premises is or is not the owner of the premises.

5 Small retail customers

- (1) A person is a small retail customer in relation to water supply if the maximum rate at which water is supplied, pursuant to one or more water supply contracts, to all premises that the person owns, leases or occupies is less than 15 megalitres per year.
- (2) A person is a small retail customer in relation to the provision of sewerage services if the maximum rate at which sewage is discharged, pursuant to one or more sewerage service contracts, from all premises that the person owns, leases or occupies is less than 10.5 megalitres per year, as determined in accordance with guidelines issued by IPART.

Part 2 Licensing of network operators and retail suppliers

Division 1 Network operators

6 Applications for licences

- (1) An application for a network operator's licence for water infrastructure must address each of the matters referred to in section 10 (4) (a)-(e) of the Act that is relevant to that kind of licence and must include, or be accompanied by:
 - (a) information as to the activities for which the licence is sought and the area within which those activities are proposed to be carried out, and
 - (b) a comprehensive statement as to:
 - (i) the events and circumstances that could adversely affect the applicant's ability to carry out the activities for which the licence is sought, and
 - (ii) the probability of the occurrence of any such event or circumstance, and

- (iii) the measures to be taken by the applicant to prevent or minimise the likelihood of any such event or circumstance, and
 - (c) a comprehensive statement as to the arrangements that the applicant has made, or proposes to make, in relation to:
 - (i) the design, construction, operation and maintenance of the infrastructure, including particulars as to the life-span of the infrastructure, the system redundancy built into the infrastructure and the arrangements for the renewal of the infrastructure, and
 - (ii) the continued safe and reliable performance of the infrastructure, and
 - (iii) the continuity of water supply, and
 - (iv) alternative water supplies when the infrastructure is inoperable, and
 - (v) the maintenance, monitoring and reporting of standards of service, and
 - (d) a comprehensive statement, in relation to the water supplied from the infrastructure, that specifies:
 - (i) if the water so supplied is drinking water, how the 12 elements of the framework for the management of drinking water quality, as detailed in the Australian Drinking Water Guidelines, have been addressed and will be implemented and maintained, and
 - (ii) if the water so supplied is non-potable water, how the 12 elements of the framework for the management of recycled water quality and use, as detailed in the Australian Guidelines for Water Recycling, have been addressed and will be implemented and maintained and, having regard to those guidelines, the purposes for which the water may be used and the purposes for which the water may not be used, and
 - (e) any other information that will be required for inclusion in the Register of Licences.
- (2) An application for a network operator's licence for sewerage infrastructure must address each of the matters referred to in section 10 (4) (a)-(e) of the Act that is relevant to that kind of licence and must include, or be accompanied by:
- (a) information as to the activities for which the licence is sought and the area within which those activities are proposed to be carried out, and
 - (b) a comprehensive statement as to:
 - (i) the events and circumstances that could adversely affect the applicant's ability to carry out the activities for which the licence is sought, and
 - (ii) the probability of the occurrence of any such event or circumstance, and

- (iii) the measures to be taken by the applicant to prevent or minimise the likelihood of any such event or circumstance, and
 - (c) a comprehensive statement as to the arrangements that the applicant has made, or proposes to make, in relation to:
 - (i) the design, construction, operation and maintenance of the infrastructure, including particulars as to the life-span of the infrastructure, the system redundancy built into the infrastructure and the arrangements for the renewal of the infrastructure, and
 - (ii) the continued safe and reliable performance of the infrastructure, and
 - (iii) the continuity of sewerage services, and
 - (iv) alternative sewerage services when the infrastructure is inoperable, and
 - (v) the maintenance, monitoring and reporting of standards of service, and
 - (d) a comprehensive statement, in relation to the conveyance, treatment and disposal of sewage by means of the infrastructure, as to:
 - (i) the manner in which health and ecological assessments will be undertaken and any concerns arising from any such assessment addressed, and
 - (ii) the arrangements for the disposal of waste from the infrastructure, and
 - (e) any other information that will be required for inclusion in the Register of Licences.
- (3) An applicant for a network operator's licence for sewerage infrastructure is exempt from the requirements of subclause (2) (b) to the extent to which the infrastructure is the subject of a licence under the *Protection of the Environment Operations Act 1997*.
- (4) For the purpose of considering the application, either the Minister or IPART may direct the applicant to furnish further information within a specified time.

7 Matters as to which Minister must be satisfied in relation to licence applications: section 10 (4) (e)

Before granting a network operator's licence, the Minister must be satisfied that the applicant has the capacity to carry out the activities that the licence (if granted) would authorise in a manner that does not present a significant risk of harm to the environment.

8 Purposes for which non-potable water may be used

- (1) A network operator's licence for the construction, maintenance and operation of water infrastructure for the supply of non-potable water must specify the purposes for which the water may be used (referred to as ***authorised purposes***).

- (2) The purposes for which non-potable water may be used are to be determined in accordance with the 12 elements of the framework for the management of recycled water quality and use, as detailed in the Australian Guidelines for Water Recycling.

9 Prescribed licence conditions: section 13 (1) (a)

The conditions to which a network operator's licence is subject are:

- (a) in relation to a licence for the construction, maintenance and operation of water infrastructure, the conditions set out in Parts 1 and 2 of Schedule 1, and
- (b) in relation to a licence for the construction, maintenance and operation of sewerage infrastructure, the conditions set out in Parts 1 and 3 of Schedule 1.

Note—

Other conditions may be imposed by the Minister under section 13 (1) (b) of the Act.

Division 2 Retail suppliers

10 Applications for licences

- (1) An application for a retail supplier's licence for the supply of water must address each of the matters referred to in section 10 (4) (a)–(e) of the Act that are relevant to that kind of licence, and must include, or be accompanied by:
- (a) information as to the activities for which the licence is sought and the area within which those activities are proposed to be carried out, and
- (b) a comprehensive statement as to:
- (i) the events and circumstances that could adversely affect the applicant's ability to supply water, and
- (ii) the probability of the occurrence of any such event or circumstance, and
- (iii) the measures to be taken by the applicant to prevent the occurrence, or minimise the effect, of any such event or circumstance, and to arrange for alternative supplies of water in response to any such event or circumstance, and
- (iv) the arrangements that the applicant has made, or proposes to make, in relation to complaint and debt recovery procedures, and
- (c) any other information that will be required for inclusion in the Register of Licences.
- (2) An application for a retail supplier's licence for provision of sewerage services must address each of the matters referred to in section 10 (4) (a)–(e) of the Act that are relevant to that kind of licence and must include, or be accompanied by:

- (a) information as to the activities for which the licence is sought and the area within which those activities are proposed to be carried out, and
 - (b) a comprehensive statement as to:
 - (i) the events and circumstances that could adversely affect the applicant's ability to provide sewerage services, and
 - (ii) the probability of the occurrence of any such event or circumstance, and
 - (iii) the measures to be taken by the applicant to prevent the occurrence, or minimise the effect, of any such event or circumstance, and to arrange for the provision of alternative sewerage services in response to any such event or circumstance, and
 - (iv) the arrangements that the applicant has made, or proposes to make, in relation to complaint and debt recovery procedures, and
 - (c) any other information that will be required for inclusion in the Register of Licences.
- (3) For the purpose of considering the application, either the Minister or IPART may direct the applicant to furnish further information within a specified time.

11 Matters as to which Minister must be satisfied in relation to licence applications: section 10 (4) (e)

Before granting a retail supplier's licence, the Minister must be satisfied that the applicant has the capacity to carry out the activities that the licence (if granted) would authorise in a manner that does not present a significant risk of harm to the environment.

12 Purposes for which water may be supplied under a retail supplier's licence

- (1) A retail supplier's licence must not authorise the supply of drinking water unless the water infrastructure from which the water is to be supplied is also authorised in relation to the supply of drinking water.
- (2) A retail supplier's licence that authorises the supply of non-potable water must indicate the authorised purposes for that water, being the authorised purposes specified in the licence for the water infrastructure from which the water is to be supplied.

13 Prescribed licence conditions: section 13 (1) (a)

- (1) The conditions to which a retail supplier's licence is subject are:
 - (a) in relation to a licence for the supply of water, the conditions set out in Parts 1 and 2 of Schedule 2, and
 - (b) in relation to a licence for the provision of sewerage services, the conditions set

out in Parts 1 and 3 of Schedule 2.

Note—

Other conditions may be imposed by the Minister under section 13 (1) (b) of the Act.

- (2) Clauses 2, 3, 4, 5 and 7B of Schedule 2 apply only to those licensees that supply water, or provide sewerage services, to small retail customers.

Division 3 General

14 Applications for variation of licence conditions

- (1) An application under section 15 of the Act:
- (a) must be in such form as the Minister may approve, and
 - (b) must be accompanied by such fee as the Minister may determine, and
 - (c) must be lodged at the office of IPART.
- (2) The provisions of clause 6 (1), (2) and (4) apply to an application in relation to the conditions of a network operator's licence, but to the extent only to which they are relevant to the application, in the same way as they apply to an application for that kind of licence.
- (3) The provisions of clause 10 (1), (2) and (3) apply to an application in relation to the conditions of a retail supplier's licence, but to the extent only to which they are relevant to the application, in the same way as they apply to an application for that kind of licence.
- (4) In considering the conditions to which a licence should be subject, regard is to be had to the principles set out in section 7 (1) of the Act.
- (5) Subclause (4) does not restrict the matters to which regard may be had in considering the matters referred to in that subclause.

15 Combined applications

A single application under section 8 or 15 of the Act may relate both to a network operator's licence and to a retail supplier's licence.

16 Combined plans

- (1) An infrastructure operating plan, water quality plan, sewage management plan and retail supply management plan (being plans prepared on behalf of the holder of one or more licences) may be contained in a single document.
- (2) Subclause (1) does not apply to the extent to which the Minister directs to the contrary by written notice given to the licensee concerned.

- (3) Any required plan for water or sewerage infrastructure that is intended to connect with other such infrastructure:
 - (a) must be consistent with any other required plan for the other infrastructure, and
 - (b) must demonstrate that the infrastructure to which it relates is compatible with the other infrastructure.
- (4) In subclause (3), **required plan** means:
 - (a) an infrastructure operating plan, a water quality plan or a sewage management plan, or
 - (b) in relation to a public water utility's infrastructure, any requirements in the nature of such a plan to which the public water utility is subject under its operating licence or otherwise.

17 Person to be notified as to licence applications

- (1) For the purposes of section 9 (1) (b) (iii) of the Act, IPART must furnish the following additional persons with copies of any application for a network operator's or retail supplier's licence:
 - (a) the Minister administering the *Environmental Planning and Assessment Act 1979*,
 - (b) the Minister administering the *Protection of the Environment Operations Act 1997*.
- (2) If the applicant for a licence proposes to connect to or use any of the water industry infrastructure of a public water utility as part of the activities in relation to which the licence is sought, IPART must promptly notify that public water utility of the licence application.

18 Register of Licences

- (1) The Register of Licences is to include the following information in relation to each licence:
 - (a) the name of the licensee,
 - (b) the name of each person (other than the licensee) who is specified in the licence as being authorised:
 - (i) to construct, maintain and operate the water or sewerage infrastructure specified in the licence, or
 - (ii) to supply water, or provide sewerage services, by means of the water or sewerage infrastructure so specified,as the case requires,

- (c) the kind of licence (network operator's or retail supplier's) held by the licensee,
 - (d) the activities that the licensee is authorised to carry out, as specified in the licence,
 - (e) the date on which the licence was granted,
 - (f) the licensee's area of operations under the licence,
 - (g) any conditions imposed on the licence by the Minister under section 13 (1) (b) of the Act,
 - (h) any variation of licence conditions under section 15 of the Act,
 - (i) details of any action taken against the licensee under section 16 of the Act,
 - (j) such other information as is required by subclause (2), (3), (4) or (5).
- (2) In the case of a network operator's licence for water infrastructure, the Register of Licences must also include the following information:
- (a) each source from which the water handled by the infrastructure is derived,
 - (b) in the case of non-potable water, the authorised purposes for that water,
 - (c) the identity of each licensed retail supplier or public water utility that has access to the infrastructure services provided by the infrastructure for the purpose of supplying water to its customers,
 - (d) a description of any other water infrastructure to which the infrastructure is connected.
- (3) In the case of a network operator's licence for sewerage infrastructure, the Register of Licences must also include the following information:
- (a) the identity of each licensed retail supplier or public water utility that has access to infrastructure services provided by the infrastructure for the purpose of providing sewerage services to its customers,
 - (b) a description of any other sewerage infrastructure with which the infrastructure is connected,
 - (c) a description of the arrangements for the disposal of waste from the infrastructure.
- (4) In the case of a retail supplier's licence for the supply of water, the Register of Licences must also include the following information:
- (a) a list of each licensed network operator or public water utility from whose water infrastructure the licensee supplies water to its customers,

- (b) each source from which the water handled by the infrastructure is derived,
 - (c) a statement as to whether or not any of the licensee's customers are small retail customers,
 - (d) details of any order under section 54 of the Act by which the licensee is declared to be a retailer of last resort.
- (5) In the case of a retail supplier's licence for the provision of sewerage services, the Register of Licences must also include the following information:
- (a) a list of each licensed network operator or public water utility by means of whose sewerage infrastructure the licensee provides sewerage services to its customers,
 - (b) a statement as to whether or not any of the licensee's customers are small retail customers,
 - (c) details of any order under section 54 of the Act by which the licensee is declared to be a retailer of last resort.

Division 4 Exemptions from requirement for licence

19 Water industry infrastructure that is exempt from requirement for a licence

For the purposes of section 5 (4) (b) of the Act, the water industry infrastructure specified in Schedule 3 is prescribed as water industry infrastructure to which section 5 of the Act does not apply (and so is exempt from the requirement for a licence).

19A Water industry infrastructure that was formerly exempt from requirement for a licence

- (1) For the purposes of section 5 (4) (b) of the Act, the water industry infrastructure prescribed under clause 19 immediately before the commencement of the [Water Industry Competition \(General\) Amendment \(Licensing Exemptions\) Regulation 2010](#) is prescribed, until the end of 30 June 2014, as water industry infrastructure to which section 5 of the Act does not apply.
- (1A) Subclause (1) extends to water industry infrastructure regardless of whether it was constructed or installed before or after the commencement of the [Water Industry Competition \(General\) Amendment \(Licensing Exemptions\) Regulation 2010](#).
- (2) In their application to infrastructure specified in subclause (1):
- (a) clauses 6 (1) and 7 (1) of Schedule 1 are to be construed as if the words "Before commencing to operate water infrastructure commercially" were replaced by the words "Within 6 months after being granted a network operator's licence for water infrastructure", and
 - (b) clauses 13 (1) and 14 (1) of Schedule 1 are to be construed as if the words "Before

commencing to operate sewerage infrastructure commercially” were replaced by the words “Within 6 months after being granted a network operator’s licence for sewerage infrastructure”, and

- (c) clause 7A (1) of Schedule 2 is to be construed as if the words “Before commencing to carry out activities under a retail supplier’s licence” were replaced with the words “Within 6 months after being granted a retail supplier’s licence”.

19B Phasing-in of requirements relating to infrastructure formerly exempt under clause 7 or 13 of Schedule 3

(1) This clause applies to:

- (a) water industry infrastructure referred to in clause 7 (a) of Schedule 3 that has been able to be connected to water industry infrastructure operated by a public water utility for more than one year, and
- (b) water infrastructure referred to in clause 13 (a) of Schedule 3, that has been able to be connected to water infrastructure operated by a public water utility for more than one year.

(2) In their application to such infrastructure:

- (a) clauses 6 (1) and 7 (1) of Schedule 1 are to be construed as if the words “Before commencing to operate water infrastructure commercially” were replaced by the words “Within 6 months after being granted a network operator’s licence for water infrastructure”, and
- (b) clauses 13 (1) and 14 (1) of Schedule 1 are to be construed as if the words “Before commencing to operate sewerage infrastructure commercially” were replaced by the words “Within 6 months after being granted a network operator’s licence for sewerage infrastructure”.

Part 3 Retailers of last resort

20 Contingency plans: section 55

The contingency plan prepared by a retailer of last resort:

- (a) must identify the water or sewerage infrastructure from which it proposes to supply water, or provide sewerage services, to supply failure customers, and
- (b) must outline the arrangements that it has, or proposes to make, with the service provider for that infrastructure for supplying water, or providing sewerage services, to supply failure customers, and
- (c) must indicate the additional costs that it is likely to incur if it has to supply water, or provide sewerage services, to supply failure customers, and

- (d) must indicate any limitations (such as limitations as to capacity and reliability) in its ability to supply water, or provide sewerage services, to supply failure customers, and
- (e) must indicate any consequential effects on its ability to supply water, or provide sewerage services, to its other customers that are likely to arise if it is has to supply water, or provide sewerage services, to supply failure customers.

21 Declaration of supply failure: section 56 (2)

- (1) The following circumstances are prescribed as circumstances in which the Minister may declare a supply failure in relation to a licensed retail supplier:
 - (a) where, as a consequence of action taken under section 15 or 16 of the Act, the licensee is no longer authorised to supply water or provide sewerage services, as the case may be, to its customers in the whole or any part of its area of operations,
 - (b) where the licensee has refused to supply water or provide sewerage services to its small retail customers in the whole or any part of its area of operations without having made adequate arrangements for the transfer of the water supply or sewerage services to some other licensed retail supplier or public water utility,
 - (c) where the licensee has given written notice to the Minister of its intention to terminate the supply of water, or the provision of sewerage services, to some or all of its customers,
 - (d) where the licensee is unable, or the Minister is satisfied that it is imminently likely to become unable, to supply water or provide sewerage services to its customers in the whole or any part of its area of operations.
- (2) As soon as practicable after a supply failure is declared in relation to a licensed retail supplier, the supplier must provide the relevant retailer of last resort with such information as the transfer code of conduct requires to be provided in those circumstances.

22 Special circumstances contracts: section 57 (3)

- (1) The terms on which a retailer of last resort supplies its small retail customers are prescribed as the terms of that retailer's special circumstances contract.
- (2) If the retailer of last resort supplies different small retail customers under different contracts, the prescribed terms are the terms of such of those contracts as the Minister may notify the retailer as having been approved by the Minister for that purpose.

23 Retailer of last resort supply fee

A retailer of last resort may require a transferred customer to pay a last resort supply fee

not exceeding an amount determined by the Minister on the recommendation of IPART.

24 Notice of special circumstances contract to be sent to customers

As soon as practicable after a person becomes a customer of a retailer of last resort pursuant to section 57 of the Act, the retailer of last resort must cause notice of that fact, together with a copy of the relevant special circumstances contract, to be sent to the customer.

Part 4 Conduct of significant pricing investigations by IPART

Division 1 Preliminary

24A Definitions

In this Part:

draft report—see clause 24H.

investigated monopoly supplier, in relation to a significant pricing investigation, means the monopoly supplier that provides the investigated service.

investigated service, in relation to a significant pricing investigation, means the service that is the subject of the investigation.

IPART Act means the [Independent Pricing and Regulatory Tribunal Act 1992](#).

IPART website means the website with the URL of www.ipart.nsw.gov.au, or any other website, used by IPART to provide public access to its reports.

issues paper—see clause 24E.

pricing methodology, in relation to a determination of pricing for an investigated service, means the methodology applied (or proposed to be applied) for the purpose of determining the appropriate pricing for the service.

public hearing, in relation to an issues paper, means a public hearing held under clause 24G on the paper.

significant methodological change, in relation to a significant pricing investigation, means any change in the pricing methodology applied (or proposed to be applied) to the investigated service that IPART considers is significantly different from the methodology previously applied to:

- (a) the determination of the pricing for the investigated service, or
- (b) the determination of pricing for services of a kind to which the investigated service belongs.

significant pricing investigation—see clause 24B (1).

24B Application of Part

- (1) This Part applies in relation to the conduct of an investigation by IPART for a determination of the pricing (a **significant pricing investigation**) of a water supply service or sewerage service provided by a monopoly supplier that has been referred to IPART by the Minister under section 52 (1) (a) of the Act (whether before or after the commencement of this Part) if:
 - (a) the investigation is begun after the commencement of this Part, and
 - (b) a declaration under section 51 of the Act is in force in respect of the service, and
 - (c) IPART is satisfied that, at the time it begins its investigation, the book value of the assets used by the monopoly supplier to provide the service exceeds \$1 billion (\$1,000,000,000).

Note—

Section 51 of the Act enables the Minister, by order published in the Gazette, to declare that a specified licensed retail supplier or licensed network operator is a monopoly supplier in relation to a specified water supply or sewerage service, a specified area or a specified class of customers.

The book value of the assets of a business is the value given to those assets in the accounts of the business.

- (2) IPART is taken to have complied with the provisions of this Part concerning the conduct of a significant pricing investigation if it has substantially complied with (or has taken all reasonable steps to comply with) those provisions.

24C Relationship of Part to applied IPART Act provisions

- (1) In the event of an inconsistency between a provision of this Part and a provision of Division 7 of Part 3 of the IPART Act, the provision of this Part prevails to the extent of the inconsistency.

Note—

Section 52 (2) of the Act provides that the provisions of Part 3 of the IPART Act in relation to government monopoly services apply to and in respect of a matter referred to IPART under section 52 of the Act in the same way as they apply to and in respect of a matter referred to IPART under section 12 of the IPART Act. However, section 91 (2) of the Act provides that the provisions of Division 7 (Investigations) of Part 3 of the IPART Act apply except to the extent that the regulations otherwise provide.

- (2) Nothing in this Part is intended to limit the application of any other provision of Part 3 of the IPART Act in its application to significant pricing investigations.

24D Summary of procedure for conducting significant pricing investigations

- (1) The following is a summary of the procedure set out in this Part for the conduct of significant pricing investigations:

(a) IPART publishes issues paper and invites submissions

IPART first publishes an issues paper on the investigation. It then invites submissions on the issues paper from the investigated monopoly supplier and other persons who wish to make submissions. See Division 2.

(b) IPART holds public hearing

IPART holds a public hearing on the issues paper it has published and hears further submissions on it. See Division 3.

(c) IPART publishes draft report and invites submissions

After holding the public hearing and considering submissions on the issues paper, IPART publishes a draft report for the investigation setting out its proposed determination of pricing, its proposed pricing methodology and responses to submissions made in relation to the issues paper. It then invites submissions on the draft report from the investigated monopoly supplier and other persons who wish to make submissions. See Division 4.

(d) Requirements before IPART publishes final report

Before IPART issues its final report for the investigation, it must consider the submissions made on the draft report and include certain matters in the report concerning its pricing methodology and approach to the investigation. See Division 5.

- (2) This clause does not affect the meaning or interpretation of any provision of this Part that it summarises.

Division 2 Issues paper

24E IPART to publish issues paper

- (1) IPART must, as soon as it considers appropriate after the commencement of a significant pricing investigation, prepare an issues paper concerning the investigation.
- (2) The issues paper must set out the following matters:
 - (a) the pricing methodology and the general approach that IPART proposes to adopt in conducting the investigation,
 - (b) any significant methodological changes that IPART proposes to consider,
 - (c) the date or dates on which it proposes to hold public hearings on the paper.
- (3) The issues paper may include such other matters as IPART considers appropriate.
- (4) A copy of the issues paper must be:

- (a) given to the investigated monopoly supplier, and
 - (b) published on the IPART website for access by members of the public.
- (5) Without limiting the application of section 22A (3) of the IPART Act, written submissions about the issues paper made by the investigated monopoly supplier are to be made available to members of the public on the IPART website.

Note—

Section 22A (3) of the IPART Act enables IPART to restrict the disclosure of information contained in documents that it makes available.

24F Invitation to make submissions on issues paper

- (1) IPART must invite submissions to be made concerning the issues paper published for a significant pricing investigation from:
 - (a) the investigated monopoly supplier, and
 - (b) any other person who wishes to make a submission.
- (2) IPART must also invite submissions to be made concerning submissions made by the investigated monopoly supplier on the issues paper.
- (3) Submissions are to be made in writing unless they are made orally at a public hearing on the issues paper.
- (4) IPART is to specify a final date for the making of submissions.
- (5) IPART may specify different final dates for submissions by the investigated monopoly supplier and submissions by other persons and may extend the time for making submissions if it considers it appropriate to do so.

Division 3 Public hearing

24G IPART to hold public hearing on issues paper

- (1) IPART must hold a public hearing to hear submissions on an issues paper that it has published on a significant pricing investigation.
- (2) IPART may hold a public hearing over one or more hearing days.
- (3) IPART may hear oral submissions on the issues paper at the public hearing from the investigated monopoly supplier and such other persons as IPART considers appropriate.

Division 4 Draft report

24H IPART to publish draft report

- (1) IPART is to prepare a draft report for a significant pricing investigation as soon as it considers appropriate after the conclusion of its public hearing on the issues paper for the investigation.
- (2) Before preparing the draft report, IPART must consider all submissions made to it on the issues paper for the investigation, and on the investigated monopoly supplier's submissions, that it considers material.
- (3) The draft report must include the following matters:
 - (a) the determination of pricing that IPART proposes to make,
 - (b) the pricing methodology for the proposed determination,
 - (c) any significant methodological changes and the reasons for those changes,
 - (d) the assumptions that IPART has made for the proposed determination and the reasons for those assumptions,
 - (e) IPART's response to submissions it has received on the issues paper that IPART considers material, including the reasons for accepting or not accepting (whether wholly or in part) material submissions made by the investigated monopoly supplier.
- (4) The draft report may include such other matters as IPART considers appropriate.
- (5) A copy of the draft report must be:
 - (a) given to the investigated monopoly supplier, and
 - (b) published on the IPART website for access by members of the public.

24I Invitation to make submissions on draft report

- (1) IPART must invite submissions to be made concerning the draft report published for a significant pricing investigation from:
 - (a) the investigated monopoly supplier, and
 - (b) any other person who wishes to make a submission.
- (2) Submissions must be made in writing.
- (3) IPART is to specify a final date for the making of submissions.
- (4) IPART may specify different final dates for submissions by the investigated monopoly supplier and submissions by other persons and may extend the time for making submissions if it considers it appropriate to do so.

Division 5 Final report

24J Requirements before final report is issued

- (1) Before IPART issues its final report for a significant pricing investigation, IPART must:
 - (a) consider all submissions made to it on the draft report for the investigation that it considers material, and
 - (b) ensure that the matters referred to in subclause (2) are included in the report.
- (2) The final report must include the following matters:
 - (a) the pricing methodology applied for the determination of pricing that IPART has made,
 - (b) any significant methodological changes and the reasons for those changes,
 - (c) the assumptions that IPART has made for the determination and the reasons for those assumptions,
 - (d) IPART's response to submissions it has received on the draft report that IPART considers material, including the reasons for accepting or not accepting (whether wholly or in part) material submissions made by the investigated monopoly supplier.
- (3) The final report may include such other matters as IPART considers appropriate.

Part 5 Miscellaneous

25 Establishment of water industry code of conduct

- (1) The Minister may, by order published in the Gazette, establish a code of conduct in relation to the respective responsibilities of licensed network operators, licensed retail suppliers and public water utilities.
- (2) The water industry code of conduct may make provision with respect to such matters concerning the responsibilities referred to in subclause (1) as the Minister considers appropriate.
- (3) Without limiting subclause (2), the water industry code of conduct may make provision with respect to the following matters:
 - (a) responsibility for water quality,
 - (b) liability in the event of the unavailability of water,
 - (c) liability in the event of infrastructure failure,
 - (d) fees and charges payable in respect of the use of infrastructure,

(e) responsibility for handling customer complaints.

- (4) A licensed network operator, licensed retail supplier or public water utility must not contravene the water industry code of conduct.

Maximum penalty: 200 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

26 Establishment of marketing code of conduct

- (1) The Minister may, by order published in the Gazette, establish a code of conduct for the marketing of water supplies and sewerage services.

- (2) The marketing code of conduct may make provision with respect to such matters concerning the marketing of water supplies and sewerage services as the Minister considers appropriate.

- (3) Without limiting subclause (2), the marketing code of conduct may make provision with respect to the following matters:

- (a) standards of conduct to be observed by marketers, whether marketing in person or by phone, by letter, by fax or by email,
- (b) the information to be provided by marketers to persons to whom they are marketing,
- (c) the cooling-off periods to be available to new customers.

- (4) A marketer must not contravene the marketing code of conduct.

Maximum penalty: 200 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

27 Establishment of transfer code of conduct

- (1) The Minister may, by order published in the Gazette, establish a code of conduct for the transfer of water supplies or sewerage services to, from or between licensed retail suppliers or public water utilities (or both).

- (2) The transfer code of conduct may make provision with respect to such matters concerning the transfer of water supplies or sewerage services as the Minister considers appropriate.

- (3) Without limiting subclause (2), the transfer code of conduct may make provision with respect to the following matters:

- (a) the information that a licensed retail supplier must provide to the relevant retailer of last resort in the event that a supply failure is declared in relation to the retail supplier,

- (b) the procedures to be observed by transferors, transferees and relevant service providers when water supplies or sewerage services are transferred,
 - (c) the period of time within which transferors, transferees and relevant service providers must comply with their obligations under the code.
- (4) A transferor, transferee or relevant service provider must not contravene the transfer code of conduct.

Maximum penalty: 200 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

28 Water restrictions

- (1) This clause applies to any part of a licensee's area of operations in respect of which an order under:
- (a) the *Local Government Act 1993*, or
 - (b) the *Water Management Act 2000*, or
 - (c) the *Hunter Water Act 1991*, or
 - (d) the *Sydney Water Act 1994*,
- restricts the use or consumption of water supplied by a public water utility (a **local water restrictions order**).
- (2) The Minister may, by notice published in the Gazette, declare that a local water restrictions order, as in force from time to time, applies to and in respect of the use or consumption of water supplied by the licensee in the same way as it applies to and in respect of the use or consumption of water supplied by the public water utility.
- (3) Such a declaration may not be made if the licensee derives its water from a different water source to that from which the public water utility derives its water unless the Minister is satisfied that the circumstances giving rise to the local water restrictions order apply to both water sources.
- (4) The Minister may, by order in writing, authorise a public water utility by which a local water restrictions order may be made to make a declaration under this clause on the Minister's behalf.
- (5) A declaration made by a public water utility so authorised may be included in the same instrument as the local water restrictions order to which it relates.
- (6) A person who uses or consumes water in contravention of a local water restrictions order, as applied by this clause, is guilty of an offence.

Maximum penalty: 50 penalty units (in the case of a corporation) and 5 penalty units

(in any other case).

28A Prescribed water policy document: section 7 (3)

The *Metropolitan Water Plan* published by the New South Wales Government, as in force from time to time, is prescribed for the purposes of the definition of **prescribed water policy document** in section 7 (3) of the Act.

Note—

A copy of the latest *Metropolitan Water Plan* is available at the Water 4 Life website (www.waterforlife.nsw.gov.au).

29 Internal review: section 47 (2) (c)

- (1) A failure to make a decision on an application for a review under section 47 of the Act within 20 business days after the application is made is taken to be a refusal to alter the decision to which the application relates.
- (2) In this clause, **business day** means any day that is not a Saturday, Sunday or public holiday.

30 Approved ombudsman scheme: section 49 (1) (b)

- (1) The following classes of disputes and complaints are prescribed as disputes and complaints in relation to which an ombudsman scheme may be approved:
 - (a) disputes and complaints in relation to the marketing of water supplies or sewerage services,
 - (b) disputes and complaints arising in connection with water supply contracts and sewerage service contracts,
 - (c) disputes and complaints in relation to the transfer of water supplies or sewerage services.
- (2) The ombudsman appointed under an approved ombudsman scheme:
 - (a) must cause copies of all public reports issued by the ombudsman to be given to the Minister, and
 - (b) must cause notice to be given to the Minister of changes in the policies and procedures to be adopted in connection with the scheme.
- (3) Without limiting subclause (2), the Minister may from time to time require the ombudsman appointed under an approved ombudsman scheme to provide the Minister with reports on the operation of the scheme, including:
 - (a) particulars as to the extent to which the scheme is meeting the objectives referred to in section 49 (2) of the Act, and

- (b) particulars as to the extent to which the scheme has met relevant best practice benchmarks, and
- (c) particulars as to the extent to which licensees or specified licensees and other persons bound by the scheme have complied with their obligations under the scheme.

31 Approved auditors

For the purposes of this Regulation, a reference to an **approved auditor**, in relation to any matter affecting a licensee, is a reference to:

- (a) a person nominated by IPART, or
- (b) a person chosen by the licensee from a panel of persons nominated by IPART, or
- (c) a person nominated by the licensee and approved by IPART.

32 Availability of guidelines

Paper copies of the Australian Drinking Water Guidelines and the Australian Guidelines for Water Recycling are to be kept available for inspection by the public at the offices of IPART and electronic copies are to be made accessible to the public on or from IPART's website.

33 Exemption from licensing requirements: transitional provision

- (1) This clause applies to any water or sewerage infrastructure:
 - (a) whose construction commenced before 8 August 2008, or
 - (b) that was being operated immediately before 8 August 2008.
- (2) Water or sewerage infrastructure to which this clause applies is exempt from the operation of section 5 of the Act:
 - (a) until 8 August 2010, or
 - (b) if an application for a licence in relation to the infrastructure is lodged at the office of IPART before that date:
 - (i) until the application is finally determined, or
 - (ii) until the applicant is notified by IPART that the applicant has failed to comply with a direction to supply further information under clause 6 (4) or 10 (3),whichever first occurs.
- (3) In their application to infrastructure to which this clause applies:
 - (a) clauses 6 (1) and 7 (1) of Schedule 1 are to be construed as if the words "Before commencing to operate water infrastructure commercially" were replaced by the

words “Within 6 months after being granted a network operator’s licence for water infrastructure”, and

- (b) clauses 13 (1) and 14 (1) of Schedule 1 are to be construed as if the words “Before commencing to operate sewerage infrastructure commercially” were replaced by the words “Within 6 months after being granted a network operator’s licence for sewerage infrastructure”.

Schedule 1 Conditions for network operators’ licences

(Clause 9)

Part 1 Licence conditions for all licences

1 Provision of information

- (1) The licensee must provide the Minister or IPART with such information as the Minister or IPART may from time to time direct in relation to the licensee’s activities under the licence, and must provide it within such time as is specified in that direction.
- (2) The licensee must immediately notify:
- (a) IPART, and
 - (b) the Minister administering the *Public Health Act 1991*, and
 - (c) the Minister administering Part 2 of the *Water Industry Competition Act 2006*, and
 - (d) any licensed retail supplier that supplies water or provides sewerage services by means of the licensee’s infrastructure, and
 - (e) any other licensed network operator or public water utility whose infrastructure is connected to the licensee’s infrastructure,
- of any incident in the conduct of its activities that threatens, or could threaten, water quality, public health or safety.
- (3) The licensee must permit:
- (a) the publication on IPART’s website of such matters concerning the licensee as are required to be recorded on the Register of Licences, and
 - (b) the disclosure between relevant government agencies of any information that the licensee has provided to any one of them, and
 - (c) the disclosure to the general public of information as to any incidents reported under subclause (2).
- (4) In this clause, **relevant government agency** means any Minister or Division of the Government Service that is involved in the administration of the Act, or to which

information is provided pursuant to the Act, this Regulation or any licence condition.

2 Commercial operation of water or sewerage infrastructure

- (1) The licensee must not bring any new water or sewerage infrastructure into commercial operation without the written approval of the Minister.
- (2) Such an approval is not to be given unless the Minister has been provided with a report, prepared by an approved auditor in such manner and form as the Minister may direct, that indicates that the infrastructure:
 - (a) complies with the requirements of this Regulation and any licence conditions, and
 - (b) is capable of operating safely and in accordance with its infrastructure operating plan and its water quality or sewage management plan, as the case requires.
- (3) For the purposes of this clause, infrastructure that extends or expands existing infrastructure is not new infrastructure unless its design, construction or operation:
 - (a) involves different technology to that used in connection with the existing infrastructure, or
 - (b) is inconsistent with the infrastructure operating plan, or the water quality plan or sewage management plan, for the existing infrastructure.

3 Safe and reliable network

The licensee must ensure that its water or sewerage infrastructure is properly designed and constructed, operated in a safe and reliable manner and maintained in a proper condition, having regard to:

- (a) the purposes for which it is licensed, and
- (b) the licence conditions, and
- (c) any publicly available standards or codes relating to its design, construction, operation and maintenance.

4 Environmental protection

- (1) The licensee must comply with the requirements of:
 - (a) the *Environmental Planning and Assessment Act 1979* and any environmental planning instruments under that Act, and
 - (b) the *Protection of the Environment Operations Act 1997* and any regulations under that Act,in relation to the protection of the environment.

(2) Subclause (1) applies only in relation to the licensee's activities under the licence.

5 Codes of conduct

To the extent that it applies to a network operator, the licensee must comply with any water industry code of conduct, marketing code of conduct and transfer code of conduct.

Part 2 Additional conditions for licences for water infrastructure

6 Infrastructure operating plans

- (1) Before commencing to operate water infrastructure commercially, the licensed network operator for the infrastructure must prepare, and forward to IPART, an infrastructure operating plan that indicates the arrangements that the licensee has made, or proposes to make, in relation to:
 - (a) the design, construction, operation and maintenance of the infrastructure, including particulars as to the life-span of the infrastructure, the system redundancy built into the infrastructure and the arrangements for the renewal of the infrastructure, and
 - (b) the continued safe and reliable performance of the infrastructure, and
 - (c) the continuity of water supply, and
 - (d) alternative water supplies when the infrastructure is inoperable, and
 - (e) the maintenance, monitoring and reporting of standards of service.
- (2) The licensee:
 - (a) must ensure that its infrastructure operating plan is fully implemented and kept under regular review and, in particular, that all of its activities are carried out in accordance with that plan, and
 - (b) must, if the Minister so directs, amend its infrastructure operating plan in accordance with the Minister's direction.
- (3) If the Minister or IPART so demands, or if any significant change is made to its infrastructure operating plan, the licensee:
 - (a) must provide the Minister or IPART with a report, prepared by an approved auditor in such manner and form as the Minister or IPART may direct:
 - (i) as to the adequacy of the plan, and
 - (ii) as to the condition of its infrastructure,having regard to the purpose for which it is licensed, or

- (b) must pay the Minister's or IPART's costs of conducting an investigation into the adequacy of the plan or the condition of its infrastructure.

7 Water quality plans

- (1) Before commencing to operate water infrastructure commercially, the licensed network operator for the infrastructure must prepare, and forward to IPART, a water quality plan, in relation to the water supplied from the infrastructure, that specifies:
 - (a) if the water so supplied is drinking water, how the 12 elements of the framework for the management of drinking water quality, as detailed in the Australian Drinking Water Guidelines, have been addressed and will be implemented, and
 - (b) if the water so supplied is non-potable water, how the 12 elements of the framework for the management of recycled water quality and use, as detailed in the Australian Guidelines for Water Recycling, have been addressed and will be implemented and, having regard to those guidelines, the purposes for which the water may be used and the purposes for which the water may not be used.
- (2) A water quality plan in relation to water infrastructure for drinking water must be consistent with the Australian Drinking Water Guidelines.
- (3) A water quality plan in relation to water infrastructure for non-potable water must be consistent with the Australian Guidelines for Water Recycling.
- (4) The licensee:
 - (a) must ensure that its water quality plan is fully implemented and kept under regular review and, in particular, that all of its activities are carried out in accordance with that plan, and
 - (b) must, if the Minister so directs, amend its water quality plan in accordance with the Minister's direction.
- (5) If the Minister or IPART so demands, or if any significant change is made to its water quality plan, the licensee:
 - (a) must provide the Minister or IPART with a report, prepared by an approved auditor in such manner and form as the Minister or IPART may direct, as to the adequacy of the plan, or
 - (b) must pay the Minister's or IPART's costs of conducting an investigation into the adequacy of the plan.

8 Water meters

- (1) Any water meter that is connected to a licensee's water main must comply with the requirements of the document entitled the *Plumbing Code of Australia*, produced for

all State governments by the Australian Building Codes Board, as in force from time to time.

- (2) While water is being supplied to premises in respect of which a water meter has been installed, the licensee must ensure that:
- (a) the water meter is properly maintained and periodically tested, and
 - (b) the water meter is read at intervals of no more than 4 months, and
 - (c) written notice of each meter reading is sent to the relevant licensed retail supplier.

9 Drinking water

The licensee under a licence for water infrastructure to supply drinking water must ensure that the water supplied:

- (a) is fit for human consumption, and
- (b) complies with any requirements of the licence conditions, and
- (c) complies with any requirements under the *Public Health Act 1991* in relation to the supply of safe drinking water.

10 Non-potable water

The licensee under a licence for water infrastructure to supply non-potable water for a particular purpose must ensure that the water supplied:

- (a) is fit for that purpose, and
- (b) complies with any requirements of the licence conditions.

11 Customer connections

The licensee must not allow a customer's installation to be connected to the licensee's water main unless the installation is code compliant (within the meaning of the *Plumbing and Drainage Act 2011*).

12 Matters to be contained on licensee's website

The licensee must have an internet website on which the following matters are available for inspection by members of the public:

- (a) a plan showing the nature and general location of the infrastructure,
- (b), (c) (Repealed)
- (d) the most recent auditor's report under clause 6 that applies to the licensee,
- (e) the most recent auditor's report under clause 7 that applies to the licensee.

Part 3 Additional conditions for licences for sewerage infrastructure

13 Infrastructure operating plans

- (1) Before commencing to operate sewerage infrastructure commercially, the licensed network operator for the infrastructure must prepare, and forward to IPART, an infrastructure operating plan that indicates the arrangements that the licensee has made, or proposes to make, in relation to:
 - (a) the design, construction, operation and maintenance of the infrastructure, including particulars as to the life-span of the infrastructure, the system redundancy built into the infrastructure and the arrangements for the renewal of the infrastructure, and
 - (b) the continued safe and reliable performance of the infrastructure, and
 - (c) the continuity of sewerage services, and
 - (d) alternative sewerage services when the infrastructure is inoperable, and
 - (e) the maintenance, monitoring and reporting of standards of service.
- (2) The licensee:
 - (a) must ensure that its infrastructure operating plan is fully implemented and kept under regular review and, in particular, that all of its activities are carried out in accordance with that plan, and
 - (b) must, if the Minister so directs, amend its infrastructure operating plan in accordance with the Minister's direction.
- (3) If the Minister or IPART so demands, or if any significant change is made to its infrastructure operating plan, the licensee:
 - (a) must provide the Minister or IPART with a report, prepared by an approved auditor in such manner and form as the Minister or IPART may direct:
 - (i) as to the adequacy of the plan, and
 - (ii) as to the condition of its infrastructure,having regard to the purpose for which it is licensed, or
 - (b) must pay the Minister's or IPART's costs of conducting an investigation into the adequacy of the plan or the condition of its infrastructure.

14 Sewage management plans

- (1) Before commencing to operate sewerage infrastructure commercially, the licensed network operator for the infrastructure must prepare, and forward to IPART, a sewage

management plan, in relation to the conveyance, treatment and disposal of sewage by means of the infrastructure, that indicates:

- (a) the manner in which health and ecological assessments will be undertaken and any concerns arising from any such assessment addressed, and
 - (b) the arrangements for the disposal of waste from the infrastructure.
- (2) An applicant for a network operator's licence for sewerage infrastructure is exempt from the requirement for a sewage management plan to the extent to which the infrastructure is the subject of a licence under the *Protection of the Environment Operations Act 1997*.
- (3) The licensee:
- (a) must ensure that its sewage management plan is fully implemented and kept under regular review and, in particular, that all of its activities are carried out in accordance with that plan, and
 - (b) must, if the Minister so directs, amend its sewage management plan in accordance with the Minister's direction.
- (4) If the Minister or IPART so demands, or if any significant change is made to its sewage management plan, the licensee:
- (a) must provide the Minister or IPART with a report, prepared by an approved auditor in such manner and form as the Minister or IPART may direct, as to the adequacy of the plan, or
 - (b) must pay the Minister's or IPART's costs of conducting an investigation into the adequacy of the plan.

15 (Repealed)

16 Matters to be contained on licensee's website

The licensee must have an internet website on which the following matters are available for inspection by members of the public:

- (a) a plan showing the nature and general location of the separate components of the infrastructure (that is, each component that is used for the treatment, storage, conveyance or reticulation of sewage),
- (b) the licensee's infrastructure operating plan,
- (c) the licensee's sewage management plan,
- (d) the most recent auditor's report under clause 13 that applies to the licensee,
- (e) the most recent auditor's report under clause 14 that applies to the licensee.

Schedule 2 Conditions for retail suppliers' licences

(Clause 13)

Part 1 Licence conditions for all licences

1 Provision of information

- (1) The licensee must provide the Minister or IPART with such information as the Minister or IPART may from time to time direct in relation to the licensee's activities under the licence, and must provide it within such time as is specified in that direction.
- (2) The licensee must immediately notify:
 - (a) IPART, and
 - (b) the Minister administering the *Public Health Act 1991*, and
 - (c) the Minister administering Part 2 of the *Water Industry Competition Act 2006*, and
 - (d) any licensed network operator by means of whose infrastructure the retailer supplies water or provides sewerage services,of any incident in the conduct of its activities that threatens, or could threaten, water quality, public health or safety.
- (3) The licensee must permit:
 - (a) the publication on IPART's website of such matters concerning the licensee as are required to be recorded on the Register of Licences, and
 - (b) the disclosure between relevant government agencies of any information that the licensee has provided to any one of them, and
 - (c) the disclosure to the general public of information as to any incidents reported under subclause (2).
- (4) In this clause, **relevant government agency** means any Minister or Division of the Government Service that is involved in the administration of the Act, or to which information is provided pursuant to the Act, this Regulation or any licence condition.

2 Implementation of government policy with respect to social programs

- (1) The licensee:
 - (a) must implement any relevant government policy that applies to it, and
 - (b) must ensure that details of any such policy are forwarded to each of its customers at least once every quarter, and

- (c) must furnish a report to IPART and to the relevant Department Head, as soon as practicable after the end of each quarter, as to:
 - (i) the identity of each customer to whom any payment assistance, discount or rebate has been given during that quarter pursuant to any such policy, and
 - (ii) the amount of any such payment assistance, discount or rebate, and
 - (d) must furnish a report to any licensee to which there is a transfer of water supplies or sewerage services in respect of a customer referred to in paragraph (c) (i), as soon as practicable after the transfer takes effect, as to:
 - (i) the fact that the customer has been receiving any payment assistance, discount or rebate pursuant to any such policy, and
 - (ii) the amount of any such payment assistance, discount or rebate.
- (2) This clause does not apply to a licence for the supply of water to a customer who also receives water from a public water utility, another licensee or some other person unless the water supplied under the licence is or includes drinking water.

(3) In this clause:

quarter means the 3-month period ending 31 March, 30 June, 30 September or 31 December in any year.

relevant Department Head means:

- (a) in relation to customers whose premises are located within the area of operations of a water supply authority, council or county council, the Director-General of the Department of Local Government, and
- (b) in relation to customers whose premises are located within the area of operations of the Sydney Water Corporation or Hunter Water Corporation, the Director-General of the Department of Water and Energy.

relevant government policy means government policy with respect to social programs for the supply of water and the provision of sewerage services, as referred to in section 13 (3) (a) of the Act.

3 Customers to be notified of translation services

- (1) Any notice that the licensee is required to send to its customers, whether by the Act, this Regulation or a licence condition, must include, or be accompanied by, information as to the existence of, and the telephone numbers for, any community translation services that are available.
- (2) Such information is to be given:

- (a) in English, Arabic, Cantonese, Greek, Italian, Spanish and Vietnamese, and
- (b) in such other languages as are spoken by more than 3 per cent of the population within the licensee's area of operations.

4 Code of practice for customer complaints

(1) The licensee:

- (a) must establish and comply with a code of practice for customer complaints, whether in relation to:
 - (i) the supply of water, or the provision of sewerage services, by the licensee, or
 - (ii) the operation of the water or sewerage infrastructure from which that water is supplied or those services provided, and
- (b) must provide copies of that code of practice to the Minister, IPART and to the ombudsman, and
- (c) must keep its customers informed as to:
 - (i) the provisions of that code of practice, and
 - (ii) the existence of the ombudsman, and the procedure for referring complaints or disputes to the ombudsman, and
- (d) must furnish periodic reports to the Minister and IPART, in relation to the complaints it receives, in such form, and containing such information, as the Minister or IPART requires.

(2) A code of practice referred to in subclause (1) must conform to the requirements of AS/ISO 10002—2006.

(3) In subclause (2), **AS/ISO 10002—2006** means the Australian Standard entitled AS ISO 10002—2006, *Customer Satisfaction—Guidelines for complaints handling in organizations*, as published by Standards Australia in April 2006.

5 Code of practice for debt recovery

(1) The licensee:

- (a) must establish and comply with a code of practice for debt recovery, and
- (b) must provide copies of that code of practice to the Minister, IPART and to the ombudsman, and
- (c) must keep its customers informed as to the provisions of that code of practice.

(2) The code must provide for the deferment, in whole or in part, of payments owed by

customers suffering financial hardship.

6 Codes of conduct

The licensee must comply with any water industry code of conduct, marketing code of conduct and transfer code of conduct.

7 Environmental protection

(1) The licensee must comply with the requirements of:

- (a) the *Environmental Planning and Assessment Act 1979* and any environmental planning instruments under that Act, and
- (b) the *Protection of the Environment Operations Act 1997* and any regulations under that Act,

in relation to the protection of the environment.

(2) Subclause (1) applies only in relation to the licensee's activities under the licence.

7A Retail supply management plans

(1) Before commencing to carry out activities under a retail supplier's licence, the licensee must prepare, and forward to IPART, a retail supply management plan that indicates the arrangements that the licensee has made, or proposes to make, in relation to:

- (a) the events and circumstances that could adversely affect the licensee's ability to supply water or provide sewerage services (or both), as authorised by the licence, and
- (b) the probability of the occurrence of any such event or circumstance, and
- (c) the measures to be taken by the licensee:
 - (i) to prevent the occurrence, or minimise the effect, of any such event or circumstance, and
 - (ii) to arrange for alternative supplies of water or the provision of sewerage services (or both), as authorised by the licence, in response to any such event or circumstance, and
- (d) the arrangements that the licensee has made, or proposes to make, to ensure that it complies with:
 - (i) its code of practice for complaints by small retail customers and its code of practice for debt recovery from such customers, and
 - (ii) the marketing code of conduct and the transfer code of conduct.

- (2) The licensee:
- (a) must ensure that its retail supply management plan is fully implemented and kept under regular review and, in particular, that all of its activities are carried out in accordance with that plan, and
 - (b) must, if the Minister so directs, amend its retail supply management plan in accordance with the Minister's direction.
- (3) If the Minister or IPART so demands, or if any significant change is made to its retail supply management plan, the licensee:
- (a) must provide the Minister or IPART with a report, prepared by an approved auditor in such manner and form as the Minister or IPART may direct, as to the adequacy of the plan, or
 - (b) must pay the Minister's or IPART's costs of conducting an investigation into the adequacy of the plan.

7B Matters to be contained on licensee's website

- (1) The licensee must have an internet website on which the following matters are available for inspection by members of the public:
- (a) if the licensee is authorised to supply water under the retail supplier's licence:
 - (i) the licensee's standard water supply contract for small retail customers, and
 - (ii) the existence of any water restriction order that is in force in its area of operations,
 - (b) if the licensee is authorised to provide sewerage services under the retail supplier's licence—the licensee's sewerage service contract for small retail customers,
 - (c) the licensee's retail supply management plan,
 - (d) the licensee's code of practice for complaints by small retail customers,
 - (e) the licensee's code of practice for debt recovery from small retail customers,
 - (f) details of any relevant government policy that applies to the licensee,
 - (g) the most recent auditor's report under clause 7A that applies to the licensee.
- (2) In this clause, **relevant government policy** means government policy with respect to social programs for the supply of water or provision of sewerage services, as referred to in section 13 (3) (a) of the Act.

Part 2 Additional conditions for licences for water supply

8 (Repealed)

9 Non-potable water to match customer's needs

- (1) The licensee under a retail supplier's licence for the supply of non-potable water:
 - (a) must inform any customer to which such water is supplied as to the authorised purposes in relation to that water, and
 - (b) must not supply such water to any customer for use for any other purpose.
- (2) Subclause (1) (b) does not prevent the supply of non-potable water to a customer for use for an unauthorised purpose if the water is to be processed by the customer so as to become water for which that purpose is an authorised purpose.

10 Obligation not to over-commit

- (1) The licensee must not enter into water supply arrangements under which it assumes obligations that it is unable to meet, or advertise that it is willing to enter into such arrangements, having regard to:
 - (a) the capacity of the relevant water source to supply water or the volume of water available to the licensee from that water source, and
 - (b) the quality of the water derived from that water source, and
 - (c) the water infrastructure from which the water is to be supplied, and
 - (d) the conditions on which the licensee has access to the infrastructure services provided by that infrastructure, whether pursuant to an access agreement or access determination or otherwise.
- (2) The licensee must not enter into a water supply arrangement with a customer unless the premises to which the water is to be supplied are connected to, or readily connectible to, a water main to which the licensee has access, whether pursuant to an access agreement or access determination or otherwise.

11 Notice of intended termination of water supply

- (1) The licensee must not terminate the supply of water to any of its customers within the whole or any part of its area of operations unless it has caused at least 14 days' written notice of its intention to do so to be given to the Minister and to IPART.
- (2) This clause does not apply in relation to any customer (other than a small retail customer) with whom the licensee has entered into a water supply arrangement that sets out procedures to be followed in connection with the interruption or termination of water supply.

12 Notice of water restrictions

The licensee must ensure that its customers are kept informed of any water restriction that applies to them in any bill or other correspondence that it sends to them while the restriction is in force.

13 (Repealed)

14 Water to be supplied under contract to small retail customers

- (1) The licensee must not supply water to a small retail customer otherwise than under a water supply contract.
- (2) Such a contract must address each of the matters referred to in the Table to this clause.
- (3) Such a contract must also provide that the licensee must not:
 - (a) disconnect the customer's premises from the licensee's water main, or
 - (b) reduce the flow of drinking water from that main below that necessary for basic sustenance and hygiene,as a consequence of the customer's non-payment of a debt.
- (4) A licensee that proposes to supply water to a small retail customer on terms that are different to those set out in the licensee's standard water supply contract referred to in clause 7B (1) (a) (i) must notify the customer of the various differences before the customer enters into the contract.
- (5) Before entering into a contract to supply water to a small retail customer, the licensee must provide the customer with a disclosure notice that specifies:
 - (a) the customer's name, and the address of the premises to be supplied, and
 - (b) the date on which supply is to commence, and
 - (c) the fees and charges that will be payable in respect of the supply, and
 - (d) the circumstances in which the customer's premises may be disconnected from the water main, and
 - (e) the licensee's procedures for handling customer complaints, and
 - (f) the existence of any government-funded rebates for which the customer may be eligible, and
 - (g) where the customer can obtain a copy of the contract.

Table

The name and address of the customer

The location of the premises to which water is to be supplied

The date on and from which (and, if applicable, the date until which) water is to be supplied

The licensee's current charges for the supply of water

The way in which the customer will be notified of any change in the licensee's charges for the supply of water

The availability of payment assistance, discounts and rebates under any government policy with respect to social programs for the supply of water

The information to be included in any bill for the supply of water, which must include information as to past and present water consumption

The length of the billing period for any such bill

The time allowed for payment of any such bill and the manner in which payment may be made

The procedures available for dealing with disputed bills, including procedures for reconciling under- or over-charging

The charges applicable to overdue accounts and dishonoured payments

The charges applicable to connecting the customer's premises to the relevant water main

Any other charges that may be applicable

The arrangements for responding to requests by customers for meter testing

A description of the customer's connection point to the relevant water main

The identity of the service provider by means of whose infrastructure water is to be supplied to the consumer

The licensee's postal address and telephone number

The arrangements under which access may be gained to the customer's premises for meter inspection and other purposes

The arrangements to be made in the event that the customer vacates the premises to which the licensee supplies water

The allocation of responsibility for maintaining and testing water meters

The water source (or water sources) from which the licensee derives its supply of water

The rate at which water is to be available for supply to the customer's premises, whether generally or during specified periods

The minimum pressure at which water is to be supplied

The purposes for which the water may be used

The precautions that have been taken to prevent cross-contamination with other water

The precautions that the customer must take to prevent cross-contamination with other water and contamination of any water source

The circumstances in which water may not be available for supply to the customer's premises, the notice that will be given to customers and the arrangements that are in place for the supply of water in those circumstances

Part 3 Additional conditions for licences for sewerage services supply

15 (Repealed)

16 Obligation not to over-commit

- (1) The licensee must not enter into sewerage service arrangements under which it assumes obligations that it is unable to meet, or advertise that it is willing to enter into such arrangements, having regard to:
 - (a) the sewerage infrastructure from which those services are to be provided, and
 - (b) any limitations on the capacity of that infrastructure to dispose of waste, and
 - (c) the conditions on which the licensee has access to the infrastructure services provided by that infrastructure, whether pursuant to an access agreement or access determination or otherwise.
- (2) The licensee must not enter into a sewerage service arrangement with a customer unless the premises to which the service is to be provided are connected to, or readily connectible to, a sewer main to which the licensee has access, whether pursuant to an access agreement or access determination or otherwise.

17 Notice of intended termination of sewerage services

The licensee must not terminate the provision of sewerage services to any of its customers within the whole or any part of its area of operations unless it has caused at least 14 days' written notice of its intention to do so to be given to the Minister and to IPART.

18 (Repealed)

19 Sewerage services to be provided under contract

- (1) The licensee must not provide a sewerage service to a small retail customer otherwise than under a sewerage service contract.
- (2) Such a contract must address each of the matters referred to in the Table to this clause.

- (3) Such a contract must also provide that the licensee must not:
- (a) disconnect the customer's premises from the licensee's sewer main, or
 - (b) reduce the flow of sewage into that main below that necessary for basic hygiene, as a consequence of the customer's non-payment of a debt.
- (4) Before entering into a contract to supply a sewerage service to a small retail customer, the licensee must provide the customer with a disclosure notice that specifies:
- (a) the customer's name, and the address of the premises to be supplied, and
 - (b) the date on which supply is to commence, and
 - (c) the fees and charges that will be payable in respect of the supply, and
 - (d) the circumstances in which the customer's premises may be disconnected from the sewer main, and
 - (e) the licensee's procedures for handling customer complaints, and
 - (f) the existence of any government-funded rebates for which the customer may be eligible, and
 - (g) where the customer can obtain a copy of the contract.

Table

The name and address of the customer

The location of the premises to which sewerage services are to be provided

The date on and from which (and, if applicable, the date until which) sewerage services are to be provided

The precautions to be taken by the customer to prevent blockages or damage to the sewer main

The licensee's current charges for the provision of sewerage services

The way in which the customer will be notified of any change in the licensee's charges for the provision of sewerage services

The availability of payment assistance, discounts and rebates under any government policy with respect to social programs for the provision of sewerage services

The information to be included in any bill for the provision of sewerage services, which (where sewage discharge is metered) must include information as to past and present sewage discharge

The length of the billing period for any such bill

The time allowed for payment of any such bill and the manner in which payment may be made

The procedures available for dealing with disputed bills, including procedures for reconciling under- or over-charging

The charges applicable to overdue accounts and dishonoured payments

The charges applicable to connecting the customer's premises to the relevant sewer main

Any other charges that may be applicable

A description of the customer's connection point to the relevant sewer main

The identity of the service provider by means of whose sewerage infrastructure sewerage services are to be provided to the consumer

The licensee's postal address and telephone number

The arrangements under which access may be gained to the customer's premises for meter inspection and other purposes

The arrangements to be made in the event that the customer vacates the premises to which the licensee provides sewerage services

The nature of the matter to be discharged into the sewer main

The rate at which matter may be discharged into the sewer main from the customer's premises, whether generally or during specified periods

The arrangements that are in place to deal with sewage blockages or overflows

The arrangements that are in place in relation to the repair and maintenance of the sewerage infrastructure from which the sewerage service is to be provided

The precautions that the customer must take to prevent contamination of any water source

The circumstances in which the sewerage service may not be available for the customer's premises, the notice that will be given to customers and the arrangements that are in place for the provision of sewerage services in those circumstances

Schedule 3 Water industry infrastructure exempt from licensing requirement

(Clause 19)

Note—

This Schedule prescribes the water industry infrastructure that is exempt from the requirement in section 5 of the Act that water industry infrastructure must be licensed. It is noted that:

- (a) the definition of **sewerage infrastructure** in the Act does not include any pipe, fitting or apparatus that is situated upstream of a customer's connection point to a sewer main, so section 5 of the Act would not require such infrastructure to be licensed, and
- (b) the definition of **water infrastructure** in the Act does not include any pipe, fitting or apparatus that is situated downstream

of a customer's connection point to a water main or any pipe, fitting or apparatus that is situated upstream of a customer's connection point to a stormwater drain, so section 5 of the Act would not require such infrastructure to be licensed.

- 1** Water industry infrastructure that is constructed, maintained or operated for or on behalf of:
 - (a) a public water utility, or
 - (b) a licensed network operator.

- 2** Water infrastructure:
 - (a) that is a water supply work within the meaning of the *Water Management Act 2000*, and
 - (b) that is used solely for the purpose of taking water pursuant to an entitlement created by any of the following provisions of that Act:
 - (i) section 52 (Domestic and stock rights),
 - (ii) section 53 (Harvestable rights),
 - (iii) section 55 (Native title rights),
 - (iv) section 56 (Access licences),
 - (v) section 89 (Water use approvals),
 - (vi) section 90 (Water management work approvals),
 - (vii) section 91 (Activity approvals).

- 3** Water infrastructure:
 - (a) that is a work to which Part 2 of the *Water Act 1912* extends (within the meaning of section 5 of that Act), and
 - (b) that is used solely for the purpose of taking water pursuant to an entitlement to take and use water created by the issue of:
 - (i) a licence under Division 3 of that Part, or
 - (ii) a permit under Division 3B of that Part, or
 - (iii) an authority under Division 4 of that Part, or
 - (iv) a group licence under Division 4A of that Part, or
 - (v) an entitlement under section 20AB of that Act.

- 4** Water infrastructure:
 - (a) that is a work constructed pursuant to the authority conferred by a licence under Division 3 of Part 5 (Artesian wells) of the *Water Act 1912*, and
 - (b) that is used solely for the purpose of taking water pursuant to the authority conferred by a

licence under Division 3 of that Part.

- 5** Water industry infrastructure that is used to supply potable water or provide sewerage services, or both, to public water utilities or network licence holders, or both:
- (a) from an entity in the Australian Capital Territory that is licensed under the *Utilities Act 2000* of the Australian Capital Territory to provide a water or sewerage service (within the meaning of that Act), or
 - (b) from a water authority in Queensland that is established, and exercises water or sewerage functions, in accordance with the *Water Act 2000* of Queensland, or
 - (c) from an authority in Victoria that is established, and exercises water or sewerage functions, in accordance with the *Water Act 1989* of Victoria, or
 - (d) from the South Australian Water Corporation (established, and exercising functions, in accordance with the *South Australian Water Corporation Act 1994* of South Australia).
- 6** Water infrastructure operated by ACTEW Corporation Limited that is used to supply potable water to the Australian Capital Territory or Queanbeyan City Council from the Googong Dam Area, as authorised under the *Canberra Water Supply (Googong Dam) Act 1974* of the Commonwealth.
- 7** Water industry infrastructure:
- (a) that services land that is managed by:
 - (i) a Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983*, or
 - (ii) a registered native title body corporate within the meaning of the *Native Title Act 1993* of the Commonwealth, or
 - (iii) an Aboriginal and Torres Strait Islander corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth, and
 - (b) that:
 - (i) is not able to be connected to water industry infrastructure operated by a public water utility because it is not practicable or economical to connect the infrastructure, or
 - (ii) has been able to be connected to water industry infrastructure operated by a public water utility for less than a year, and that, before that ability arose, was not able to be connected to water industry infrastructure operated by a public water utility.

Note—

This clause exempts certain water industry infrastructure that is not able to be connected to water industry infrastructure operated by a public water utility, or that has been able to be connected for less than a year. Once it is able to be connected, there is a period of one year during which the exemption continues to apply and then section 5 of the Act requires the water industry infrastructure to be licensed.

- 8** Water industry infrastructure that is used to supply potable water or provide sewerage services, or both, and:
- (a) that is owned by:

- (i) an entity in the Australian Capital Territory that is licensed under the *Utilities Act 2000* of the Australian Capital Territory to provide a water or sewerage service (within the meaning of that Act), or
 - (ii) a water authority in Queensland that is established, and exercises water or sewerage functions, in accordance with the *Water Act 2000* of Queensland, or
 - (iii) an authority in Victoria that is established, and exercises water or sewerage functions, in accordance with the *Water Act 1989* of Victoria, or
 - (iv) the South Australian Water Corporation (established, and exercising functions, in accordance with the *South Australian Water Corporation Act 1994* of South Australia), and
- (b) that services land that is managed by:
- (i) a Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983*, or
 - (ii) a registered native title body corporate within the meaning of the *Native Title Act 1993* of the Commonwealth, or
 - (iii) an Aboriginal and Torres Strait Islander corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth.

9 Water industry infrastructure:

- (a) that is located only on land on which one dwelling house or dual occupancy is located (whether or not the dwelling is used for a business purpose), and
- (b) that is used solely for the purpose of supplying water or a sewerage service to the dwelling house or dual occupancy.

10 Water industry infrastructure:

- (a) that is owned by a customer of a public water utility or licensed retail supplier to whom water is supplied, or to whom sewerage services are provided, by that public water utility or licensed retail supplier, and
- (b) that either:
 - (i) is used by that customer solely to reticulate or convey that water, or provide sewerage services, to another person but only if the person is one of the following:
 - (A) a tenant of the customer,
 - (B) a lessee of the customer,
 - (C) if the customer is the manager of a strata plan, an owner of lots in the strata plan,
 - (D) if the customer is the operator of a retirement village, a resident of the retirement village,
 - (E) if the customer is the park owner of a residential park (within the meaning of the *Residential Parks Act 1998*), a resident of the residential park,

(F) if the customer is the park owner of a holiday park (within the meaning of the *Holiday Parks (Long-term Casual Occupation) Act 2002*, an occupant of that holiday park, or

(ii) services land that is managed by:

(A) a Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983*, or

(B) a registered native title body corporate within the meaning of the *Native Title Act 1993* of the Commonwealth, or

(C) an Aboriginal and Torres Strait Islander corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth, and

(c) that does not involve the further treatment of the water or sewage and the water or sewerage service is supplied at a cost that represents no more than the cost of providing the water or sewerage service and the cost of the operation and maintenance of the infrastructure.

11 Water infrastructure that is used solely for the purpose of stormwater drainage.

12 Water infrastructure:

(a) that is owned by a customer of a public water utility or licensed retail supplier to whom a supply of water is supplied by that public water utility or licensed retail supplier, and

(b) that is used by that customer solely to heat or chill that water in order to provide heating and cooling services to its customers and the water is not further treated.

13 Water infrastructure:

(a) that is used for the production, treatment, filtration, storage, conveyance or reticulation of water sourced only from roof water, and

(b) that:

(i) is not able to be connected to water infrastructure operated by a public water utility because it is not practicable or economical to connect the infrastructure, or

(ii) has been able to be connected to water infrastructure operated by a public water utility for less than a year, and that, before that, was not able to be connected to water infrastructure operated by a public water utility.

Note—

This clause exempts certain water infrastructure that is not able to be connected to water infrastructure operated by a public water utility, or that has been able to be connected for less than a year. Once it is able to be connected, there is a period of one year during which the exemption continues to apply and then section 5 of the Act requires the water infrastructure to be licensed.

14 Water infrastructure that is used for the production, treatment, filtration, storage, conveyance or reticulation of water sourced only from roof water if:

(a) the water is supplied for a non-potable use, and

(b) the water is supplied without charge (either in the form of a fee or a requirement for other consideration).

15 Water industry infrastructure that is used for the treatment of industrial wastewater (other than sewage) for irrigated agriculture, but only if the irrigated agriculture:

(a) is carried out in accordance with an environment protection licence (within the meaning of the *Protection of the Environment Operations Act 1997*), and

(b) is not carried out for food production purposes.